

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*noy*  
29279

**FILE:** B-215855

**DATE:** September 11, 1984

**MATTER OF:** Southeast Engineering

**DIGEST:**

Bid was properly rejected for failure to acknowledge a solicitation amendment which changed the applicable wage rate even though bidder did not receive the amendment until after bid opening since the amendment was material and was mailed by agency in sufficient time, and there is no allegation that the agency consciously attempted to exclude bidders from competing.

Southeast Engineering protests the rejection by the General Services Administration of its bid on Project No. AAK4-2140. Southeast contends that it was the second low bidder on the solicitation but that the agency rejected both its bid and that of the apparent low bidder for failure to acknowledge an amendment to the solicitation which revised a wage rate determination issued under the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982). The protester maintains that it received the amendment 4 days after the bid opening date and that it is the agency's fault that it did not receive the amendment in time.

We summarily deny the protest.

A bidder's failure to acknowledge the receipt of an amendment which modifies a wage rate determination generally renders its bid nonresponsive and ineligible for award. This is because absent acknowledgment the bidder normally could not be required to pay the specified wages to its employees. Law Brothers Contracting Corporation, B-208877, May 17, 1983, 83-1 CPD ¶ 521. A bidder's failure to acknowledge such an amendment may only be waived where no competitive advantage would accrue to the bidder (such as where the impact of the wage rates in the amendment on

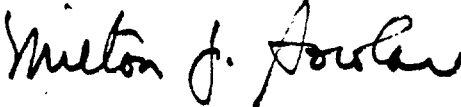
029966

B-215855

the bid price is minimal and there is a significant difference between the bid in question and the next low bid) and the bidder's employees are already covered by a collective bargaining agreement which requires the bidder to pay them at the wage rate included in the amendment. Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111, (1983), 83-1 CPD ¶ 9. Here, there is no evidence that such an agreement exists.

Moreover, the bidder bears the risk of nonreceipt of a solicitation amendment. The contracting agency discharges its legal responsibility when it issues and dispatches an amendment in sufficient time to permit all bidders to consider the amendment in preparing their bids. See Andero Construction, Inc., 61 Comp. Gen. 253 (1982), 82-1 CPD ¶ 133. The agency advises that it sent the amendment to prospective bidders 11 days prior to the bid opening date. Thus, the fact that the bidder may not have received the amendment is not relevant unless the failure resulted from a conscious or deliberate attempt by contracting officials to exclude the bidder from the competition. Rockford Acromatic Products Company, B-208437, Aug. 17, 1982, 82-2 CPD ¶ 143. The protester has not alleged that it did not receive the amendment because of a deliberate attempt by the agency to exclude it from consideration for award.

The protest is summarily denied.

*for*   
Comptroller General  
of the United States